

*J. H. Porter begins with Mr.
George my sincere regards,*

A

STATEMENT
OF THE
"ESCHEAT QUESTION,"
IN THE
ISLAND OF PRINCE EDWARD;
TOGETHER WITH
THE CAUSES OF THE LATE AGITATION,
AND
THE REMEDIES PROPOSED.

BY

GEORGE R. YOUNG, Esq.

OF HALIFAX, NOVA SCOTIA.

London:

R. & W. SWALE, GREAT RUSSELL STREET,
BLOOMSBURY.

April, 1838.

PRINTED BY J. BARFIELD, WARDOUR STREET,
PRINTER TO THE QUEEN'S MOST EXCELLENT MAJESTY.

*To the Tenantry and the other Inhabitants
of the Island of Prince Edward.*

THE affairs of the Island have now reached a crisis. It is admitted that they are in a state of lamentable embarrassment and confusion. In consequence of the improper publication by the King's printer of a private circular addressed to the proprietors, by his Excellency the Lieutenant Governor, which he intended only for their own eyes, and of the use made of it by persons who have an interest in agitation, the dormant question of escheat has been revived; the payment of rents has been resisted; the sheriff has been assaulted in the execution of his duty; strangers entering Belfast, because suspected to be bailiffs, have been fired at by a mob; public meetings have been held, inflammatory resolutions have been passed, and addresses, got up in the same spirit, presented to the Lieutenant Governor. An Island blessed with a fertile soil, a favorable climate, excellent harbours, free fisheries, and a healthy and active population,—with every requisite, in short, to make a country prosperous and a people contented and happy,—has been placed in such a position that the rights of property are endangered, the peace of society disturbed, and an exigency created in which the authority of the Government must soon be exer-

cised to enforce the laws, by resort to force, if the people themselves have not the prudence and good sense to return to tranquillity and to good order. With the sincere desire of promoting this object,—of convincing you that the past agitation can end in no beneficial result, but will only embarrass the Government, and interfere with your own prosperity and future welfare, the following observations are prepared and addressed to you. They are intended to review the questions upon which the late agitation has been raised; to hold up the even balance of justice between the proprietary body and yourselves; and to explain the recent negociation conducted with the Government, and the prospect which is now opened to you of a fair, equitable, and permanent settlement of the unhappy controversy, which has for some past years prevailed in Prince Edward Island.

It would be in vain at the present moment to inquire into the policy of a past Government, by which the Island was parcelled out into large tracts, some of which have since passed into the possession of British proprietors. It is clear that these titles now rest upon the King's grant, which is the best, because the highest title known to the law. If any one of these could be disturbed, if a proprietor holding under this title, confirmed as it is by the royal seal, could be deprived of his property, there is not a farmer or freeholder in the Island who would be secure in the ownership of his own land. Every freeholder holds under one of these original grants, and to uphold them is to uphold your own leases

and your own title deeds ; to abrogate them would not only be a gross violation of the law and of the honour of the Crown, but disturb every man in his possession, and reduce the affairs of the Island into a state of inextricable and irremediable confusion.

But however much the policy above referred to may be disapproved of, it is to be recollected that many of the past proprietors have dealt liberally with their estates—that they have sent out a valuable class of settlers—have given them advantageous leases—have in many cases received no rents—and even, after a period of years of non-payment, have released their tenantry from all the arrears of rents which were due. Many of them enjoy now the character of being good landlords—their tenants make no complaints—they are contented and happy,—and in proof of these statements the following paragraphs are selected from the circular of Sir Charles A. Fitzroy, of the 3rd October last. After referring to the existing state of feeling and excitement, his Excellency proceeds to say:—

“ I am of opinion that the remedy for these evils rests with yourselves. Give discretionary power to your agents to relieve your tenantry of the arrears of rent in those cases where it is impossible they can ever pay them up. Grant them long leases at the rate customary in the colony, payable in the productions of the soil at the market price ; or if you object to long leases, let those you do grant contain a clause allowing the tenant to purchase the fee simple within a specified period, at twenty years' purchase, or one to ensure his being paid for his improvements at a fair valuation, on the expiration of his term. Such concessions will, I am convinced, remove all just cause of complaint, and render futile any attempt at agitation.

“ Let me here observe, that I am recommending no visionary nor experimental system, but one that has been

already tried here with complete success, on the lands of those proprietors (*and I am happy to say there are many*) who act upon it. On these lands there is no agitation or discontent; on the contrary, the settlements are numerous, the farms well cultivated, and the tenantry flourishing and tranquil. The whole of the excitement and agitation now prevailing is confined to the lands of proprietors who have hitherto refused to grant liberal terms, or to their immediate vicinity; and it is to them I would particularly address myself, for it is hardly fair that they should be the cause, as they assuredly have been, of bringing odium upon the body of proprietors of land in this Island in general, which the majority of them do not deserve."

Upon his Excellency's own admission then, it appears there is no cause of complaint against the "*majority of the proprietors*"; and his statement made, while acting as your friend, will, we presume, be received as conclusive evidence upon the subject.

Before quitting the subject of the rights of the proprietors, it ought not to be forgotten, however; that some of them have acquired and now hold their title by purchase—that they have paid for their lands with money—that they were no parties to the ancient grants of 1767—and that to deprive them of their property so held and so acquired would, in plain language, be an act of robbery; and has been so characterised in the debates in the House of Assembly. The proprietors are as clearly entitled to the quiet and peaceable possession of their estates, as any of you are to your houses, the fields which you have cultivated, the crops you have raised, or the cattle you have reared; and the Government could deprive them of their estates with as little justice as you, by the same exercise of power, could be ejected from your farms

or stripped of your property. In short, the conditions contained in these grants are as binding upon the Crown, as the terms contained in your leases or deeds are binding upon the proprietors.

An argument has been for some time addressed to you by those whose purpose and business it has been and is to foment agitation, that, in consequence of the declaratory act of 1778, the rents now claimed by the proprietors are illegal. By this act, which is called the charter of the colonial rights, it was simply declared by the British parliament, that they would no longer impose taxes upon the colonies having colonial legislatures, except those taxes which should be necessary for the regulation of foreign commerce. Upon what principle can it be said that rents payable under leases, and which you voluntarily have entered into, can be compared to taxes imposed by the Government? Leases are strictly private contracts—bargains between man and man. The Government neither created, nor has it the power to interfere with them. Would you submit to any law, passed either by the Government at home or the Island legislature, requiring that you should pay to the proprietor one shilling and sixpence per acre, in place of your present rents of one shilling? Have either the right to do so? Now, if they cannot make you pay *more*, neither have they the power to compel the proprietor to take *less*. The whole argument is a fallacy, and has been so treated by his Excellency Sir Charles A. Fitzroy himself, in the following paragraph taken from his answer to the address from the inhabitants of Bear River.

" Without entering into any discussion as to the circumstances under which the original grants of lands in this Island were made, it is my duty to point out to you, that the act of 1778,* on which you ground your claims, refers only to the right of the mother country to tax her colonial subjects without the consent of the local legislatures; but it in no way bears on the question of the right of the Crown to make grants of land in the colonies. This prerogative has never been disputed; and it is equally indisputable, that as the Crown has this undoubted right in the first instance, under any conditions it might please to impose, it has, unquestionably, equally the power of waiving those conditions. Moreover, as you were acting under no compulsion when you became the tenants of the soil, but of your own free will entered into voluntary compacts with your landlords, I tell you plainly, as honest men you are bound to fulfil the contracts you have made, to the best of your ability. Wherefore, I advise, and entreat you, as men of sense, (and I give this advice with as fervent an interest in your welfare as any man among you can feel,) to dismiss this subject at once, and for ever, from your minds."

Having placed these views before you, having thus addressed your good sense and your feelings of justice, we come now to touch upon the question of escheat, and to inquire what you or the Legislature can hope to gain, if the prayer of the agitators were actually conceded, and a Court of Escheat established. We are satisfied there is not an honest man amongst you, who, if the question were submitted to him, would be prepared to say that a proprietor should be deprived of his property contrary to the law; that is to say, if he had complied with all the terms imposed by the Crown when the grant was conferred upon him, or upon the person from whom he has bought his estate. A Court of Escheat could only re-invest the lands in the Crown, upon clear proof being given that the conditions, as modi-

* See Appendix (A) for the Act.

fied by the King's Ministers, had not been performed. And it may be pressed upon your consideration, whether any of those who agitate this question have proved to you a single case, in which, if acting as a juror under the solemn sanction of an oath, you would be prepared to say that the estates stood liable to forfeiture. Do not be led away by general declamation; do not yield to specious and unfounded hopes or promises; but bring to this question the same sound understanding and honesty of purpose which you apply to the other and the ordinary transactions of life—the same rule of right and of justice which you would seek for yourselves.

The proprietors and their friends assert that no case has been made out, and further, that it is impossible to do so. If, therefore, a Court of Escheat were established, it would not, *it could not*, produce the effects which are promised; for be it recollected, that, even if a court and jury could be found in the Island, so corrupt and vicious as to violate the law, the verdict and judgment would be subject to appeal to the Queen in council, and the injured party would there be certain of obtaining substantial justice.

It would be tedious to enter more at large into this question. After long agitation and full inquiry, with an anxious disposition entertained by the Ministry to do justice to the tenantry and to promote the peace and welfare of the Island, the Government have declared the policy which they intend to pursue upon it; and your attention is solicited to the following extract from Lord Code-

rich's despatch to Lieutenant Governor Young, dated 1st August, 1832.

" I have to express my entire approbation of the discretion which induced you to suspend your decision on the appointment of a Court of Escheat, until you could receive instructions from me. The appointment of a Court of Escheat is a measure to which the Crown must always have recourse with reluctance, and which should never be adopted except with great deliberation. In the present instance it is proposed, that lands should be forfeited in Prince Edward Island for the non-performance of a condition requiring each Township to be settled with a number of inhabitants, forming the proportion of one person to every two hundred acres within the Township. For the purpose of revesting lands in the Crown under a breach of this condition, the Assembly would consider it sufficient, as may be inferred from the proceedings before the committee on this subject, that a Township should be proved to contain a certain number of acres, and not to contain a certain number of settlers. The establishment of this point might be enough to justify a forfeiture under the letter of the grants; but I cannot feel that it would form a fair and equitable ground for proceeding to that extent. I am assured (and the statement is supported by its intrinsic probability) that some proprietors have sent out more than the number of persons which would have settled their property in the prescribed proportions, but that the persons have subsequently changed their residence to other lands. These proprietors would forfeit their grants under the mode of proceeding contemplated by the Assembly. Other proprietors, on the contrary, without making any effort for the fulfilment of the conditions imposed on them, find their lands settled in the prescribed proportion by the spontaneous resort of independent emigrants. These proprietors escape under the proceedings contemplated by the Assembly. Thus it is obvious, that the proposed course could not be followed without great injustice. A bounty would be given to proprietors whose lands are good and inviting to settlers, at the expense of proprietors whose lands are inferior. It may be suggested, that the course could be amended, by requiring proprietors, whose lands do not contain a proper number of settlers, to prove, that at least they have made the attempt to provide that number of settlers. In this manner, however, a long and doubtful inquiry would often become necessary; while I consider it

essential to the institution of proceedings for forfeiting lands to the Crown, that they should be capable of a speedy decision, and of one capable of being foreseen nearly with certainty. *Unless with these conditions, I never should consent to unsettle the minds of the colonists by appointing a Court of Escheat."*

Two addresses to the Crown were passed subsequently in the House of Assembly, in the session of 1835 and 1836, upon the same subject; and in answer to them the following despatch was sent by the Right Honourable Lord Glenelg to his Excellency Sir John Harvey, on the 10th August, 1836.

" Downing-street, 10th August, 1836.

" Sir,

" I have to acknowledge the receipt of Mr. Wright's despatch of the 5th May, No. 13, transmitting an address to His Majesty from the House of Assembly of Prince Edward Island, praying that measures may be taken for revesting in the Crown such lands as are liable to forfeiture for non-settlement. In Mr. Wright's despatch is also enclosed a former address, adopted by the Assembly in their session of 1835, but not transmitted to me by the late Lieutenant Governor, together with various other documents relating to this subject.

" I have had the honour to lay the address of the Assembly at the foot of the throne, and His Majesty has commanded me to return to it the following answer.

" The evil against which the measures of the Assembly are specially directed, is the uncultivated state of the Island by reason of the want of settlers. This inconvenience was foreseen at the time when the Island first came into the possession of the British Crown, and with a view to anticipate it, there was inserted in the original grants a condition requiring the grantees, on pain of forfeiture, to settle their lands with protestants, ' to be introduced from such parts of Europe as are not within His Majesty's dominions, or to be such persons as have resided within His Majesty's dominions of America' for two years preceding the date of the respective grants. It would not be possible now to ascertain, nor perhaps is it important to inquire, whether any exertions were made by the original grantees to perform this condition; but it is evident that, even up to the pre-

sent time, but little has been effected towards that object. Accordingly, as early as the year 1802, the subject was made a matter of complaint to His Majesty's Government, and an act was passed by the local legislature, but appears not to have been confirmed by His Majesty, for enforcing the forfeiture of unsettled estates. In 1817, it would seem that two estates, Lots 15 and 55, were actually revested in the Crown for non-performance of the settlement duties; but in the following year a modification of the original condition was allowed, by dispensing with the exclusive description of foreigners who were to be accepted as settlers, while the time for performance of the condition was extended to December, 1826. In September, 1826, Lord Bathurst announced, that it was the intention of His Majesty's Government to substitute for the existing settlement duties others 'of a more easy and commodious nature;' an intention, however, which does not appear ever to have been carried into effect. In 1832, an act was passed by the local legislature, for regulating the proceedings of a Court of Escheat, and an application was made to the Lieutenant Governor for the establishment of such a tribunal; but on reference to His Majesty's Government the act was disallowed, for reasons stated in the inclosure to my predecessor's despatch of 19th January, 1835, and His Majesty's Government declined to sanction the erection of the tribunal solicited by the legislature. In each of the succeeding years the question has been before the legislature, and in 1833, 1835, and 1836, petitions respecting it have been addressed to His Majesty by the Assembly.

"Such is a very brief summary of what has taken place on this subject. I proceed to explain the view which is taken by His Majesty's Government, of the present state of the question, and of the measures which it would now be convenient to pursue.

"At the date of the original grants of land in Prince Edward Island, and indeed for many years afterwards, the principles on which the settlement of the Island was to be encouraged, would seem not to have been correctly understood. A slight consideration would have shewn, that when land could be so easily acquired on freehold tenure in the neighbouring British Provinces, and in the United States of America, but few settlers would consent to become tenants in Prince Edward Island, or having become so, would continue to remain there. The obligation, therefore, which was exacted by the Government, and assumed by the proprietors, was, to all useful purposes nugatory; because, supposing a proprietor to have used every effort to comply

with it, and to have actually sent out to his estate in Prince Edward Island, the stipulated number of settlers, he could have had no security that those settlers would not, afterwards, migrate either to other provinces, or to the other estates within the Island. It is confidently asserted, and the nature of the case warrants the belief, that has actually occurred. But before His Majesty's Government could be a party to the forfeiture of any estate for non-performance of the settlement duties, they would require to be satisfied not only that there are not at the present moment, but that there have not been at any time the stipulated number of settlers on that estate, and that this circumstance has arisen from the wilful neglect of the proprietor. *It is needless to say that such an inquiry could scarcely be now undertaken with any success, that it would be tedious and expensive in its process, and that it must tend to alarm the public mind, without holding out any fair prospect of a useful result.* For these reasons His Majesty's Government must at once decline to advise His Majesty to accede to the prayer of the Assembly, as set forth in their address of the 9th of April last."

And as a proof that Her Majesty's Government continue to entertain the same opinion on this question, the following extract is given from a letter addressed by Sir George Grey to Mr. Young, as the professional agent of the proprietors:—

" Downing-street, 2d January, 1838.

" Sir,

* * * * *

" Lord Glenelg is very sorry to learn from the letter of the correspondent in Prince Edward Island, that the agitation respecting the escheat question still continues, and that the tenantry are still under the delusion that the Government can be prevailed on to forfeit the titles of the absent proprietors in favour of the actual occupants of the land. His lordship, however, will instruct Sir Charles Fitzroy to take every means in his power to undeceive the tenantry in this respect—to allay the existing excitement—and to vindicate the law; and he has no doubt that, by a firm and temperate course of proceeding, this desirable result may be attained.

I have the honour to be, Sir,

" Your most obedient servant,

(signed)

" GEORGE GREY."

" G. R. Young, Esq."

Without remarking further upon the good sense and spirit of equal justice which is apparent in the language of the last paragraph of Lord Glenelg's despatch, it ought to weigh with you individually that the policy thus declared of Her Majesty's Ministers has been vindicated and approved of by the Island Legislature. By the message of his Excellency Sir John Harvey, whose friendly feeling towards you is beyond all doubt, the question of escheat was brought under the consideration of the House of Assembly in the session of 1837, and in the face and presence of yourselves, of their constituency and of the country, the following resolutions were passed by a large majority, and now appear upon the journals.

“Resolved,—That it is the opinion of this committee that the sovereign always had a legal, constitutional, and ever undoubted right to waive any cause of forfeiture which has already occurred, or may yet occur, by the breach of any conditions imposed on the grantees, their heirs and assigns, in and by such grants; and that such lands could not legally be revested in the Crown, without an inquisition of escheat, or other process of law having the same effect. But while this committee fully recognize the prerogatives of His Majesty, they deeply lament the effect of the repeated indulgences to the grantees, which have been productive of the most fatal consequences to the prosperity of this Island.

“Resolved,—That His Majesty having been advised to disallow the establishment of a Court of Escheat, for re-vesting in the Crown such lands as might be found liable to forfeiture for the non-performance of the conditions imposed on the grantees, and having suggested the adoption of a measure whereby all lands in this Island would be made to contribute towards the general revenue of the colony, and this committee coinciding in opinion with His Majesty's Government that such a measure would be the means of inducing the proprietors of large tracts of wilderness lands speedily to settle or dispose of the same, and thereby lessen the burthens which have hitherto been borne

by the resident colonists only, they recommend to the House to order a bill to be brought in for imposing an assessment on all lands within the Island."

Upon these resolutions it is unnecessary to offer any comment, except to convey the opinion entertained of them by Sir John Harvey himself, in a letter addressed to the proprietors in behalf of the tenantry—soliciting liberal terms of settlement in your behalf—dated the 15th February, 1837. He thus refers to the above resolutions:—

"I cannot conclude without offering you my congratulations upon the satisfactory result of the recent appeal to the popular branch of the legislature of this Island, by which the question of 'Escheat' has been set at rest, as far as the most unequivocal recognition and solemn record upon its journals of all proprietary rights by that body, by which they have been heretofore so often impugned, is capable of effecting that object."

In the late revival of a question thus deliberately disposed of, no hope of success can be entertained, unless the Government be persuaded to break a solemn and recorded pledge conveyed to the proprietors, after both parties were patiently heard and had every opportunity of access. As no new facts have been discovered—as the agitators have made out no new case—as they have not advanced any new arguments—it is pressed upon you, whether the language of Lord Glenelg be not entitled to respect—that the further agitation of the question of escheat "*must tend only to alarm the public mind, without holding out any fair prospect of a useful result.*"

The only ground upon which a forfeiture of these tracts had been claimed, is because the proprietors have not settled upon their lands the requisite

number of settlers; and the arguments used by the King's Ministers in these despatches must convince every dispassionate judgment, that at this distant period, when most of the parties and witnesses are dead, and the evidence lost, no satisfactory result could be arrived at, by inquiring into the conflicting statements of the two rival parties.

But the question remains, whether it is the interest of the present tenantry and the settlers that the lands they now occupy should be escheated, and pass into the hands of the Crown. Some of the persons who have agitated upon this question have endeavoured to inflame your minds by holding out this prospect,—that if the estates of the proprietors were forfeited, they would be granted unconditionally by Her Majesty to those who occupied them—that from being tenants, without paying for your lands, you would become freeholders, and thus be released for the future from the payment of rents. Now ask yourselves if the Government has held out any such promise—have these hopes the shadow of a foundation from the language of any person in authority? To prevent future doubt or misconception upon this question, the following extracts are selected from the two despatches before referred to. Lord Goderich, in his despatch of the 1st August, 1832, says:—

“ In concluding this despatch, I think it right to advert to a rumour, that much restlessness prevails among certain classes in Prince Edward Island, from an expectation that the property of the owners of Townships will be escheated, and that any portions now occupied will be vested in the occupants, without being subjected to rent or other obli-

gation. I cannot attach much credit to this rumour; but at the same time it may be proper to make one or two observations upon it. If any lands were escheated in Prince Edward Island, it is probable that such portions of them as are actually occupied, would be continued to the occupying tenants at their present rents. *There would, however, be no remission of the conditions on which the lands are now held of the proprietors; and assuredly there would be no free grants.* This mode of dealing with the public property has been abandoned in almost every British colony. You will shortly receive instructions for abandoning it also in Prince Edward Island, and for substituting in its stead, a system of alienating by public sale, such lands as there may be occasion to dispose of. *I have taken this notice of the subject, in order that should a misconception be probable, you may be able to prevent the tenants of lands in Prince Edward Island from forming the erroneous notion, that they would gain any personal advantage by the forfeiture of the Townships on which they are settled."*

And Lord Glenelg sanctions the same policy in the concluding paragraph of his despatch of the 10th August, 1836:—

"I have thought it necessary thus explicitly to make known to you the views of His Majesty's Government on the subject, because I feel that nothing can so powerfully militate against the best interests of the colony as the protracted agitation and excitement respecting it. *It would appear that an erroneous impression has got abroad among the poorer class of settlers, that on forfeiture by the present proprietors of their titles to the land, it would be re-granted by His Majesty in freehold to the actual occupants.* This impression, indeed, would seem to have originated as far back as the year 1787, and it may perhaps have derived some confirmation from the course pursued with respect to the forfeited lots, Nos. 15 and 55. Nothing, however, can be more unfounded. You will take the most effectual means in your power for making it generally known that even should His Majesty be advised in any case to proceed against lands liable to forfeiture, the Crown would, in the event of its success, *step exactly into the place of the former proprietor, and would enforce the observance of any contract which might have been made with him by the tenant; and that under no circumstances which it is possible to anticipate*

would gratuitous grants of land be conceded to any persons whatever.* But you will, at the same time, announce that His Majesty's Ministers have not, as at present advised, felt themselves at liberty to sanction any proceedings for enforcing the forfeiture of estates on the ground of the non-performance of the original conditions respecting settlements."

This proves that it is better for you to have to deal with the proprietors than with the Government; and leads to an inquiry into the late negotiation conducted between the proprietors and the Government, touching their and your relative rights.

His Excellency Sir John Harvey, it is admitted by all parties, was a good and upright Governor. He was zealous and active in the performance of his duties—courteous and affable to all who approached him—eager to promote and foster every scheme for the advancement of the public good; and it will now be one of the permanent remembrances of his administration, that he undertook the office of mediator, and endeavoured to compose the controversy between landlord and tenant, which it is to be hoped will be brought now to a satisfactory and final settlement. After the escheat question was disposed of by the legislature in 1837, his Excellency addressed the following circular to the proprietors as a body :—

* The Government, or the Local Legislature, would seek the very highest price they could get for the lands; the price now sought by the Government is twenty shillings per acre;—would either of them *lease* lands to those unable to purchase—would they receive the price in instalments, rents in produce, or accept arrears in the same way now proposed by the Proprietors?—See Terms proposed in page 29.

" *Government House, Prince Edward Island,*
" 15th February, 1837.

" My Lords and Gentlemen,

" In inviting your attention to the proceedings which have recently taken place in this Island, upon the subject which has so long agitated the minds of the tenantry upon many of the estates, 'Escheat,' and more especially to the message which I sent down to the House of Assembly on the 30th ultimo, and the proceedings* adopted upon it (copies of which are enclosed), I am induced to make this appeal to you on behalf, not only of such of these deluded men as may be in arrear of their rent and incapable of making payment, but of the whole body of settlers in this Island who hold their lands upon 'short leases,' by expressing my conviction,—a conviction founded upon that knowledge of the subject which nothing but a residence in the Island, and a practical acquaintance with the character, condition, feelings, and sentiments of the people can give,—that however they may be compelled to submit (as compelled they shall be) to the power of law, there are only three measures by which their satisfaction and prosperity can be insured, and as these measures depend wholly upon you, I am induced to call upon you to redeem the pledge of co-operation with me, which collectively you so frankly gave me upon my appointment to the government of this Island, by meeting my wishes and suggestions upon the points to which I have alluded, and which I beg you to believe are dictated by a due regard to what appear to me to be the true interests (interests which cannot be severed) as well of landlord as of tenant.

" First,—Grant 'long leases,' not only of all lands now under lease, but of all which may hereafter be leased; if, however, you are desirous of reserving a power of resumption at the expiration of any period less than *fifty years*, the occupying tenant in such case should be remunerated for his improvements at a fair rate of valuation; on no other terms can a man be reasonably expected to commit himself and his children to an outlay of labour and of capital on lands not his own, and to do justice to those lands.

" Second,—Agree to receive your rents in agricultural produce or in money, at the option of the tenant (as is, I believe, invariably done in all young colonies, and is more especially just and necessary in one which possesses no metallic currency, or other circulating medium of fixed value, as is the case with respect to this Island;) the rate at

* See ante page 14.

which produce is to be received in payment of rent, to be fixed with reference to the average market price in the Island.

"Third,—Remit all arrears of rent now due from such as are incapable of making payment, or whose character for industry and integrity may merit the indulgence; or at all events, consent to receive a legal rate of interest from such as are in arrears, without demanding payment of the principal.

"Give your agents discretionary instructions to this extent, and I take upon myself to assert that every ground of dissatisfaction will be removed, and you will have the pleasing consciousness of having done all that depends upon you, and that you can reasonably be required to do, to promote the prosperity of the colony, by removing those obstacles which have hitherto retarded and obstructed it."

This letter did not reach the proprietors till the middle of the month of April. Now, mark the spirit in which this proposition was received by them! Although their property is held under the sanctions of the law—although the arrears of rent were due under leases freely entered into by yourselves in the first instance, and which could not be disputed in a court of justice—although it was proposed to the proprietors to relinquish the free and unconditional control of property which was their own—to agree to terms which might affect and embarrass future sales,—they raised no complaint, and exhibited no reluctance; but in a prompt and conciliatory temper, at once responded to those suggestions which, in the opinion of your best friend, "were calculated to remove every ground of dissatisfaction," and further, to inspire them with "the pleasing consciousness of having done all that could be reasonably required to promote the prosperity of the colony."

At a meeting of the proprietors, held on the 20th of the same month, the draft of the proposed answer was prepared and agreed to by those present. Some thought it objectionable, because it exceeded what Sir John Harvey required; but after correspondence and personal communication, a second meeting was held by the proprietors on the 31st May, when the following letter was generally approved of. Indeed several of the proprietors are prepared to prove that they have acted for years upon terms equally liberal, which is acknowledged in the circular of Sir Charles A. Fitzroy.

"London, 31st May, 1837.

"Sir,

"We, the undersigned proprietors of land in Prince Edward Island, beg to acknowledge the honour of your Excellency's letter of 15th February, and to thank you for doing us the justice to believe that we are ready and willing to co-operate with your Excellency in any such measures for promoting the welfare of the colony as may be compatible with the duty we owe to ourselves. We freely and fully admit in your Excellency that knowledge of the subject which, as you very justly observe, 'nothing but a residence in the Island, and a practical acquaintance with the character, condition, feelings, and sentiments of the people can give.' We cordially concur in the principle laid down by your Excellency, that the interests of landlord and tenant cannot be dissevered; and we hail with satisfaction your Excellency's declaration, enforced by your prompt and decisive measures with respect to the Hay River meeting, that the disorderly and refractory shall be compelled to submit to the power of the law, a power which, unfortunately for the interests of the colony, has been, at different times and places in the Island, set utterly at defiance.

"We feel it no more than justice to ourselves to remind your Excellency, that many of us have had, as landlords, ground of complaint, at least as just and legitimate as any which may have been laid before you against us, by parties in the Island; but we at the same time, beg leave in the most perfect sincerity to assure you, that our feelings, wishes, and intentions, have not been altered by these un-

gracious returns; we feel, as at first, a lively interest in the welfare and happiness of our tenants; we wish, as at first, to satisfy all their reasonable expectations; and we intend, as at first, to give them every proof of our being well and favourably disposed towards them.

"Having said thus much, we have now to state, that upon the strong assurance of your Excellency that the following terms will remove every ground of dissatisfaction, we will give our agents discretionary instructions, as your Excellency suggests, to act upon them, so far as may be found practicable, being no more than what most of us have already done; and we are confident the predicted success which may attend them, will afford your Excellency a gratification equal to our own.

"First,—To grant 'long leases,' not only of the lands now under lease, but of all such lands as may hereafter be leased; and if a power of resumption be desired and exercised at the expiration of any period less than *fifty years*, then the tenant, in such case, to be remunerated for his improvements at a fair rate of valuation of his interest therein.

"Secondly,—To receive our rents, so far as may be found practicable, in agricultural produce, viz. grain and pork, or other available articles; such produce to be received at the average market price in the Island.

"Thirdly,—To receive a legal rate of interest from such tenants as, upon inquiry, shall be found incapable of paying their arrears, without demanding the principal, until they are in a condition to make payment: such interest to be reserved, and taken in addition to the accruing rents. To remit rents indiscriminately, would be encouraging the idle and profligate, and acting unjustly to the honest and industrious who have kept up their payments.

"We are happy to find that the Escheat question is completely set at rest; and we beg to offer your Excellency our grateful acknowledgment of the firm and judicious exercise of your office on that point. The present plan, by way of alternative, however, of taxing wilderness lands at four shillings per one hundred acres, would, if carried into effect, render His Majesty's indulgence and waiving of conditions utterly nugatory and of no avail. It will receive from us all the fair, open, and legal opposition which we can give it; and we confidently trust that your Excellency will not consider that we are acting otherwise than rightly in this particular: to a fair and moderate tax upon land, in common with other property, we should not object.

"We beg to congratulate your Excellency on the further honour and promotion to which His Majesty has been

pleased to advance you; but had it pleased His Majesty to have continued you in the Government of the colony, we feel assured that candour, impartiality, and firmness, would have been the characteristics of your Excellency's administration.

"You will not, we trust, refuse to carry with you to your new appointment, our thanks, our best wishes for the health and happiness of yourself and your amiable family, and allow us to add, our regrets."

"His Excellency Major-General

"Sir John Harvey, C.B. K.C.H. &c."

Before this letter was transmitted to the Island, Sir John Harvey was removed to New Brunswick, and Sir Charles A. Fitzroy, the present Lieutenant Governor, was appointed in his stead. Previously, however, to the departure of his Excellency from England, he had communications with Robert Stewart, Esq. the Chairman of the Prince Edward Island Association; and he had his assurance that the majority of the proprietors would agree to those terms, and would be ready to aid him, during his administration, in every reasonable measure calculated particularly to propitiate the tenantry, and to compose the public mind.

His Excellency the Lieutenant Governor, in his circular of October last, complains that four months had elapsed after his departure from England, "without his receiving any further communication." Some of the proprietors did not consider that an immediate reply to Sir John Harvey's letter was required, as Mr. Stewart had communicated to Sir Charles A. Fitzroy a copy of that letter, and of the answer which was proposed to be sent to it; and had his Excellency made any communication to Mr. Stewart that he wished to be put in possession of that answer,

it would have been immediately forwarded. The delay which occurred in the transmission of the answer arose from this cause—and this cause only—that Mr. Stewart, in whose hands it remained, was anxious to send it to the Island with the signature of every proprietor in England attached to it; and from the 3rd of May, up to the receipt of Sir C. A. Fitzroy's circular, he had been conducting a correspondence with the proprietors, some residing at extreme points in the United Kingdom and some upon the continent, to effect this desirable object.

After this explanation, it can excite no surprise in your minds that the proprietors felt the utmost astonishment at the receipt of His Excellency's circular, and consider themselves most deeply injured by the unwarrantable publication of it in the Royal Gazette. The private and the published copies were received by them by the same packet; and they felt it incumbent upon them to treat as a public document that which was intended to be a private communication, and, moreover, could only be effective to the ends in view by being so dealt with. They felt aggrieved at the charges which had been preferred against them to his Excellency in their absence, when they had no opportunity of answering them, and apprehended that the effect of this document would be what has since actually happened:—the revival of the question of Escheat, and the open and violent resistance to the King's officers in the execution of the laws. They still cherish the hope however, that, by the moderation which they

have since exhibited, and by the regard which they have continued to manifest for your welfare and happiness, that these injuries may yet be redressed; and that the agitation and violence exhibited by *some* of the tenantry, may be checked and finally suppressed by that honest feeling and respect for the law which, in the opinion of their agents and themselves, yet prevail amongst the large majority of the respectable part of the population.

His Excellency states in his circular, that no complaint can be preferred against the great majority of the proprietors; that on "their lands" there was "*no agitation or discontent; on the contrary, the settlements were numerous, the farms well cultivated, and the tenantry flourishing and tranquil.*" Being anxious, before replying to his Excellency, to know who were the parties amongst them against whom complaints had been preferred, the proprietors applied to Lord Glenelg for a copy of the return, and referred to in the circular; but as it had been marked "*private and confidential,*" his Lordship, from a nice sense of honour and delicacy of feeling, declined to comply with this request, at the same time stating that he would write to Sir Charles A. Fitzroy upon the subject, and apply for his consent to a copy being furnished. If this should be obtained, the accused parties will vindicate themselves hereafter against the charges made, and endeavour to convince his Excellency that he has been misinformed. If they fail in this vindication, and a case be established against any one or more of the proprietors of harsh or illiberal conduct to their

tenantry, the others, so far from complaining, will be glad to see them exposed.

Those who know the circumstances are surprised that his Excellency should refer to the case of the Guernsey settlers, and to that of the Acadian French located upon Lot 10: transactions which occurred, the one about *forty* and the other *twenty* years ago. And to shew the opinion entertained upon them, the following passages are extracted from a letter sent by Mr. R. Stewart to his Excellency the Lieutenant Governor, bearing date 5th December, 1837.

* I am concerned to learn that so strong a feeling against the proprietors continues to be entertained and fostered in the Island—a feeling which I still consider to be unjust and ill founded, notwithstanding the four charges made against them to your Excellency, as set forth in the printed circular. The first of these charges, and which alone appears to me to affect the proprietors, namely, that of holding out promises personally or by their agents, which promises were never fulfilled: this is a very serious charge, and the guilty parties deserved the severest punishment; but it is so general, that it only can be met by a general denial on the part of those who have not been guilty of such delinquency. The second charge, namely, that of selling lands and receiving payment for the same in this country, would seem to me, as the case is stated, to have been done by persons who had no titles to the lands which they sold, and consequently could not have been proprietors, but swindlers; some of whom, unfortunately, are to be met with in every country: similar cases have frequently occurred in this country, where parties were so imprudent as to accept of defective titles.* The third charge, namely, that about the Guernsey settlers, appears more like a fiction than reality, and I never heard of it until I read your Ex-

* Instances could be adduced, even in Prince Edward Island, and also in the adjacent Colonies, where the same land was granted to two different individuals, by the local authorities, and consideration in money taken from each: but would it be fair to charge those authorities with intentional frauds for such errors?

cellency's letter, from which it does not appear to me that the delinquent was a proprietor at all. If 'the land they had paid for did not exist,' allow me to ask, of what was the offending party a proprietor? If the case be correctly stated, it appears clearly to have been an act of swindling; but a letter which I received from the Island by the last packet states, that the land did exist, but had been erroneously described. My correspondent says, 'Mrs. —, of Island celebrity, was, I hear, the offending person; the land, though not exactly situated as she described it, *does exist*, and the Guernsey settlers I am told actually hold it.' And this is to a certain extent confirmed by the Colonial Herald* of the 21st October last, which states the occurrence to have happened about *forty years* ago. The fourth and last charge, namely, that of some person having received one thousand pounds towards the purchase of Lot 10, having no right to make the sale; if that were so, he could not have been the proprietor of the lot; but since the receipt of your Excellency's letter I have made some inquiries into that case, because that lot was purchased by my brother in 1832, from the executor of the late Earl of Selkirk, and from what I have been able to collect, I cannot help thinking that your Excellency has been misinformed as to the nature of that transaction, which occurred about twenty years ago. At that time, and long subsequently, Lot 10 was the property of the late Earl of Selkirk,—than whom a man more humane or more honourable did not exist, nor one less capable of countenancing an act of oppression or injustice by those acting under or for him, nor one who did more towards promoting the prosperity of the colony. The late Attorney General, Johnstone, was his Lordship's agent, and, as I am informed, agreed to sell the lot to a Mr. Donald Mackay, a ship builder and timber merchant, who paid a small deposit, and was to pay the residue of the purchase-money by instalments; but as he had not the money to pay for the property, it was agreed that he should be allowed to fell and sell the timber, to make up the purchase-money: it is believed, that he entered into some subsidiary agreement with certain Frenchmen to fell the timber for him, and to receive a portion of land for their labour, (to this arrangement, however, it did not appear that Lord Selkirk or his agent Mr. Johnstone were parties;) they, the Frenchmen, accordingly set to work to fell the timber on that and other lots, for they were not very scrupulous as to whose timber they took. In December, 1823, Mr. Mackay was

* Published in Prince Edward Island.

wrecked on St. Paul's Island, when himself, some passengers, and all the crew, twenty-six in number, perished, and the ship and cargo were totally lost: it turned out that Mr. Mackay died insolvent, but whether his insolvency was known previously to his decease, or was caused by the loss of ship and cargo, I am unable to say; but be that as it may, the result was that the Frenchmen lost their labour, and Lord Selkirk his timber, but retained his land. This I believe to be a correct statement of the transaction; but as the party who related it to me did so from recollection, it is possible it may not be strictly correct: Mr. Forgan was in Mr. Johnstone's office at the time, and he will most likely be in the possession of documents which will enable him to correct inaccuracy, should any exist, of which I am not aware. At any rate, the present proprietor of Lot 10 had no concern in the transaction, he fairly bought the lot and paid for it, many years after it happened. From 1823 to 1832, when my brother purchased the lot, every effort, as I am told, was made to sell or let part or the whole of it, without success; and to shew the opinion entertained in the Island respecting the lot, I may say, that upon my recommending a family who went out from this country in 1834 to settle upon Lot 10, I had more than one letter from the Island, one of them from Mr. Forgan, remonstrating with me for so doing, and representing the lot as a swamp, unfit for settlers, and without any means of access to it. There is one circumstance, however, which in fairness they ought to have mentioned to your Excellency, namely, that there are some Frenchmen who agreed to purchase land on Lot 10, in the possession of which they have been for some years and still are, without paying either principal or interest, as yet, so far as I know; but as the proprietor is the sufferer in this case, of course it is considered all fair."

After the offer of friendly mediation tendered by Sir John Harvey, adopted by Lord Glenelg in his despatch of the 1st of May, 1837, and renewed by his Excellency Sir C. A. Fitzroy in his circular, the proprietors, in the month of January last,—to allay the agitation which has been raised in the Island, to restore tranquillity, and to promote your welfare and prosperity, by embarking their capital

in following out a liberal and extensive system of emigration from Scotland, upon which they have long contemplated acting, if they can introduce it with safety,—submitted to Lord Glenelg the following Terms, for the future management of their estates. Many of them have long cherished this intention with a view to assist their countrymen, and to settle their lands with a class of settlers, admitted to be the best for the New World.

FIRST. *Proposed Terms for conducting sales of lands in the Island of Prince Edward.*

Each township belonging to the undersigned will be surveyed as the demand for lands arise, roads laid out in the most judicious direction, and the land be parcelled out in lots of 100, or 200 acres each, with a frontage on the road of 10 chains to each 100 acres.

An up-set price will be set on each lot, regard being had to quality and location, varying from six shillings and threepence Halifax currency to twenty shillings Halifax currency per acre; the great body of lands to be offered at the lesser or intermediate prices, and the higher for those lots only of the first quality, as to soil and convenience of location. The Government demand, for ungranted lands in the Island, twenty shillings Halifax currency, per acre. The average price of land sold by the British North American Land Company last year, was nine shillings per acre. The timber lands, sold in New Brunswick to Americans in large tracts,

brought from ten shillings to fifteen shillings per acre. A tract, belonging to the heirs of Sir John Wentworth, situate in the district of Pictou, in the Province of Nova Scotia, sold in 1835, from fifteen shillings to twenty shillings per acre; and the undersigned have the best authority for asserting their lands to be equal in soil, and more eligible for settlement, than any of the above referred to. By the British Packet, which arrived in December; one of the undersigned has received a proposal from a resident in the Island, for the purchase of 500 acres of his estate, at the price of twenty shillings currency per acre.

Sale to be offered on the following Terms and Conditions.

The purchaser, on paying 25 per cent. of the price, to be let into possession of the land, under an agreement to pay the interest annually, and to be entitled, on one half of the purchase money being paid, to have a deed in fee simple. The agreement to be in writing, and signed by both parties. Before going into possession, the buyer to execute a Warrant of Attorney in Ejectment, to be acted upon, if failure be made in the payment of interest or purchase money. To secure the other half of the purchase money, the purchaser to give a mortgage over the land, with a power of sale contained in it, and to execute a Warrant of Attorney in Ejectment, both to be drawn in conformity with the agreement.

As the purchaser is to receive the balance, if a

sale should take place, over the money owing by him, it is his interest, as much as that of the proprietor, that suits and legal expenses should be avoided. The power of sale and warrant are insisted upon to save unnecessary expense.

The proprietor to be bound in the said agreement and mortgage, to receive the balance of the purchase money, with the interest due, whenever tendered.

The purchaser to pay the remaining moiety in five equal instalments, with interest, charged at the rate of five per cent., due at the time of each instalment being paid : on failure of payment, the proprietor to have the right of selling the lot.

If the proprietor, in default of payment by the purchaser, determine to sell, four months' notice, by advertisement in an Island newspaper, must be previously given ; and, upon a sale being made, the balance, (if any), after deducting expenses, to be paid over by the proprietor to the owner. After the four months' notice, the proprietor to have the power of selling, at any future time, by public or private sale.

The purchaser, after he obtains his deed, to have the right to sell at any time to a third party ; but the proprietor to have the option of accepting the new purchaser, as his debtor for the balance of purchase-money due, or of retaining for such balance the liability of the first purchaser.

The buyer to take the land subject to the payment of quit rent, and any tax now imposed, or that may hereafter be imposed, upon the land.

SECOND. *Terms of Settlement proposed to the present tenantry.*

The occupying tenants to have the option of purchasing their farms at twenty years' purchase in every case, supposing the rents to be one shilling per acre; if more rent be paid, the sum and proportion to be adopted as the maximum; and to be allowed the same liberal conditions for paying the purchase-money as already stated; or they may continue to hold on lease, as may be most agreeable to them.

It is impossible to fix a standard to meet the circumstances of each individual case.

The Proprietors bind themselves, absolutely, not to exceed the years of purchase above proposed with any tenant; but they are ready to open a negotiation with each of them, and to take into favourable consideration the circumstances, which the tenant is of opinion entitle him to a deduction.

The Proprietors have the clearest evidence, to prove, that many settlements have been effected in past years by the tenants upon these terms, and that they will be most acceptable, at the present time, to the great body of the tenantry.

LEASES.

THIRD. *Terms proposed to Emigrants and New Settlers for Leases.*

To those who, in place of purchasing, prefer to remain as tenants, to Emigrants, and to New Settlers, the lands will be let in lots of 100 acres each, upon the following terms.

Leases will be granted for sixty-one years certain, or the longest of *Three Lives*, to be named when the Lease is executed, or for ninety-nine years, upon the following rents:—

First and Second year - - No Rent.

Third year - - - - -	0	3	per acre.	} sterling
Fourth year - - - - -	0	6	ditto	
Fifth year - - - - -	0	9	ditto	
Sixth year - - - - -	1	0	ditto	

And to continue for the remainder of the term, at the rent of one shilling per acre, or five pounds sterling for 100 acres. The tenant to pay the quit rents, and all taxes now existing, or to be hereafter imposed upon land.

The rents to be paid by the tenant, either in money, or in grain, salted beef, pork, or butter, raised from the land, at the market price, to be delivered either at Charlotte Town, or at some other shipping port, as may be decided upon by the proprietor; and a written or printed notice to be given to the tenant, or left at his usual place of abode, at least one month previous to the day of payment. The grain, and other articles named, to be delivered in good marketable or shipping condition.

The rent to be paid in labour, if the proprietor require it; but the tenant to have the option of paying in money, or produce raised from the land.

The tenant, at any future time during the continuance of the lease, to have the right of pur-

chasing upon the same terms as before detailed.—
This will appear as a condition in the lease.

The Term Day, for the payment of rents, to be
the 20th of November in each year.

The undersigned hereby agree to be bound, absolutely, to the terms above stated, for the period of five years, from the 1st of May next.

They submit these terms as to price and for the facility and purpose of settlement, as more liberal and advantageous than if the lands were ungranted, and remained now under the control of the Government. If still at the disposal of the Crown, the upset price would be as high, if not higher, than they demand, and the purchasers could not enter upon the land, or enjoy title, until the whole of the price had been paid down: they offer to receive their payments by instalments. To lease the lands, as they propose, is a plan which the Government has not attempted in any other colony, and which could not be introduced, except at an expense which the undersigned believe would exceed the receipts. Their proposal to accept the rents in labour, or in produce, it is clear, could not be done, except by private individuals. They accept interest at 5 per cent. in place of 6 per cent. which is the legal rate in the Island, and in the neighbouring colonies of Nova Scotia and New Brunswick.—Further, the above terms now proposed, are even more liberal and conciliatory, than those suggested by Sir John Harvey, while he held the administration of the Government, and they have his assurance by letter, that

if the terms submitted by him were agreed to, every ground of dissatisfaction would be removed.

They refer, in conclusion, to the third head of the proposals, as a fresh proof of the anxiety they really feel, to promote the settlement of the Island, and to carry on a regular and extensive system of emigration; if the local authorities, and the legislature should employ their influence to suppress the present disturbances, to support the execution of the laws, and to support the rights of the undersigned, which are founded upon the sanction of the law, and entitled as they are to consideration, from the liberal spirit in which they have been, and are still, disposed to exercise them.

(Signed) GEORGE R. YOUNG, Solicitor
and Counsel for
A. COLVILE, for Earl of Selkirk.
SIR GEORGE F. SEYMOUR.
SIR THOMAS S. SORELL.
DAVID STEWART.
ROBERT STEWART.
ROBERT BRUCE STEWART.
REV. T. H. LANGTON.
HENRY W. HEMSWORTH.
RICHARD J. TODD.
JOHN HILL.
HARRIET HILL.
SAMUEL CUNARD.
H. WINCHESTER.

Terms approved by the Solicitor of
Earl of Westmoreland, and
Lord James Townsend.

After various negotiations with his Lordship, in which a deep anxiety was evinced upon his part to protect the rights of the tenantry and settlers, and to uphold the equal balance of justice as a mediator; his Lordship transmitted the terms to the Island, in the following despatch.

" Downing-street, 16th March, 1838.

" Sir,

" I enclose for your information a copy of a letter which I have received from Mr. George R. Young, a gentleman who represents, as counsel and solicitor, the interests of several of the proprietors of estates in Prince Edward Island. I enclose also copies of the various written proposals to which Mr. Young's letter refers. Although the arrangement between the proprietary body and their tenantry be, correctly speaking, an affair of private concern, in which the Government have no power to exercise any authority, yet there are circumstances in this case which seem to me to require, if not to justify, its interposition. The people themselves have, of late years, frequently appealed to the Government on the question. Your predecessor and yourself have both, in fact, undertaken the office of mediating between the proprietors and their tenants, and this could not now be declined without some inconsistency, and the creation perhaps of new embarrassments. In addition, the maintenance of the public peace is directly involved in the amicable adjustment of the controversy, and we should imperfectly discharge our duty if we did not labour to prevent and avert these breaches of the law, which, when actually perpetrated, involve the necessity of the interference of the Government for the purpose of punishment. For these reasons I have been induced to enter on this subject; and with a sincere desire to allay the present agitation of the public mind in the Island on the question of Escheat, and to create a happier tone of confidence and mutual goodwill between the proprietors and their tenants, I transmit the enclosed terms tendered by the proprietors. They are submitted in their behalf as meeting every requisition suggested by your predecessor and approved of by yourself, and as embracing new conditions for the sale and settlement of their lands never required of them; and I cannot but think that they would, if acted upon by the tenantry and future

settlers, contribute to the good of all the parties concerned, and to the general welfare of Prince Edward Island.

"With this document in your possession, although it will not be possible for you to interfere by any authoritative acts, yet on all fit occasions you will express your opinion, and endeavour to remove every unreasonable mistrust or apprehension under which the less informed classes of society may labour.

"I am aware that I commit to you an office of which it is not easy or possible to define the limits; but while mediating between the parties you will of course treat them as free agents, and care must be taken to involve the Government in no improper responsibility, and to observe those strict rules of justice and impartiality by which alone its friendly intervention in this negotiation can be respected and made effective.

I have, &c.

(signed) "GLENELG."

"Lieutenant Governor

"Sir Charles A. Fitzroy, K.H. &c."

Upon the language of this despatch it is unnecessary to offer many remarks. Lord Glenelg has clearly entered upon the negotiation to meet the wishes of yourselves, to pursue the policy suggested by Sir John Harvey, and his Excellency the Lieutenant Governor; and in the acceptance of these terms, to observe those "strict rules of impartiality and justice," by which the rights of both parties could be best upheld, and the interposition of the Government rendered effectual to bring the controversy to a final and permanent conclusion. The proprietors neither desired nor sought for any marks of special favour. They had done all that was required of them; more,—of their own accord, and without solicitation, they made other concessions. Having acted thus, they sought the protection of the Government, and the exercise of its authority to vindicate the law, if

violated in the future as it has been in the past. In this document there is contained an approval of these terms; a direction to his Excellency the Lieutenant Governor to recommend them on all proper occasions; a recognition of the policy of former Governments on the question of Escheat, declared in the several despatches previously published, and so recently as in the letter of Sir George Grey, of the 2nd of January last, to Mr. Young, (see page 13); and a temperate but instructive reference to that power of punishment which the Government have a right to exercise, and intend, it is presumed, to employ, if any breaches of the law, similar to the resistance of Robertson, or the firing at the party at Belfast, before referred to, be repeated. It is to be hoped, however, that the proprietors having thus voluntarily and liberally acceded to the propositions made in your behalf; that you, "*although treated as free agents, and the Government decline any improper responsibility,*" will prevent "*the necessity of the interference of the Government, for the purpose of punishment,*" or the "*creation of those new embarrassments,*" from which the Government are most anxious to be kept free.

Although the proprietors offer their willing testimony to the courtesy and candour with which they were treated, they cannot flatter themselves that they have acquired any undue influence with Her Majesty's Government, or that they can be ranked amongst that "*faction*" whom the agitators say have obtained "*the ear of the Government.*" They again

repeat, that his Lordship manifested his anxiety throughout to maintain the character of an impartial arbitrator. They refer to the language of the despatch, as the clearest evidence of his Lordship's desire to do justice to both parties.

The proprietors having thus complied with every request,—having proposed a system for the sale and settlement of their lands, in accordance with the policy recommended by the last and the present Governor, in their offers of mediation,—having secured the approbation of the Colonial Minister to that system,—being prepared to comply in good faith with the terms submitted, and to sell their lands in continuous lots or blocks, at moderate prices, and to promote a regular and extensive system of emigration,—confidently rely upon the support and friendly aid of the people in the Island—that past differences will be forgotten—the laws be respected and obeyed—property be made secure, and the future welfare and destinies of the colony, proceed in that career of prosperity which you yourselves—the tenantry and the settlers—by your own future conduct, have now the opportunity of securing.

The proprietors, however, wish it to be understood that in proposing these terms, they have done so, not from any apprehension of the final result of this controversy, but from the sincere desire they feel to promote the prosperity and happiness of the tenantry. They are conscious that the interests of landlord and tenant are the same—they wish to act

in the spirit of harmony and combined operation with you. But if attempts be made to disturb bargains legally and voluntarily entered into, they maintain their right to enforce them, and they hold the distinct pledge of the Government, that if attempts are resumed to resist the laws, force will then be employed to quell such attempts.

The following despatch is published here for your information :—

“ Downing-street, 1st May, 1837.

“ Sir,

“ I have received, and have laid before the King, Sir John Harvey’s despatches of the 24th and 26th of January, and 7th of February last, on the subject of certain proceedings which took place at a public meeting held at Hay River, in Prince Edward Island, with reference to the decision of His Majesty’s Government on the address to the King, praying for the establishment of an Escheat Court.

“ His Majesty commands me to express his approbation of the active steps taken by Sir John Harvey to counteract and suppress the unconstitutional doctrines embodied in the address adopted at that meeting; and His Majesty has perceived with peculiar satisfaction the prompt determination evinced by the House of Assembly to vindicate and maintain the rights of individuals and the prerogatives of the Crown. His Majesty trusts that the decided manner in which the address adopted at the Hay River Meeting has been reprobated by the representatives of the people, and by the executive Government of Prince Edward Island, will disabuse the minds of any persons who may have ignorantly adopted views in regard to the grantees of land, inconsistent with the law and with the universal rights of property.

“ With respect to the situation of the tenantry in Prince Edward Island, I learn with much regret the distress to which they are exposed. At the same time, it would be impossible for His Majesty’s Government to interfere, otherwise than as a mediator between them and their landlords. I would fain hope that the communication addressed to the latter by Sir John Harvey, on the 15th February last (a copy of which he transmitted to me on the 7th March), will in-

duce them not to press with severity on their tenants ; and should I have the opportunity of communicating officially with those gentlemen, I should be prepared to support Sir John Harvey's recommendations, which appear to me to be founded on a humane and wise consideration of the circumstances of the case.

I have the honour to be, Sir,

" Your most obedient humble servant,
" GLENELG."

" The Officer administering the
" Government of Prince Edward Island."

To avoid the necessity of the employment of force—to relieve Her Majesty's Ministers from a duty, which, although it be the first of a just and benign Government to perform, is always painful in its exercise—the proprietors, of their own accord, have removed every pretence of complaint. Having done this, they feel that their property is secure, because, as a last resort, they can appeal to their Sovereign and to Parliament for protection. If compelled to appear before that tribunal—to exhibit and prove the case now submitted to you—one of two results will probably follow ; Parliament will either direct the agitation to be repressed and peace to be maintained for the future, as has been done in Canada, by the employment of military force ; or it may deprive you of a local government, by adding the Island, as a county, to Nova Scotia. Sir Robert Peel, in his place in Parliament, has suggested the idea of combination, by forming the lower provinces of British North America into one government. A feeling in favour of this project prevails in Parliament ; and be assured, that the evil consequences to the Island of the prolonged agitation of the escheat question, will be among

the strongest arguments for its union to one of the neighbouring provinces.

Another course is open to the proprietors, and if they did not confidently rely upon the assurance conveyed in the letter of Sir John Harvey, and by his Excellency Sir C. A. Fitzroy, that confidence and good-will would be restored—that the great majority, who are contented and happy, will put down the agitation now raised by a discontented few—they might be induced to sell their lands to some of those associations which are now established, and who, with a view of relieving the overburdened population of Ireland and England, would pour in upon the Island a race of paupers, who cannot be considered the most desirable class of settlers for the colony. Do you wish to be invaded by the unfortunate, perhaps the vicious, of the Old World? They are anxious to save the Island from this alarming evil—to sell their lands at fair prices, according to the demand which naturally occurs—and to introduce an industrious and moral class of settlers, who will be hailed as kindred and acceptable members of society by the present population.

Further, with the view of annoying the proprietors, applications have recently been made to the Lieutenant Governor, by some of the leading agitators, for grants to individuals of the five hundred feet reserved along the shores of the Island for the use of the fisheries. In 1833, an application respecting this strip of five hundred feet along the shore, was made by some of the proprietors to the colonial minister; and to prevent any future misconception

upon this point—to shew that the Government are persuaded they have not the power to make such grants—that the shore belongs to the grantees, or those who hold under them, subject to the rights of the public, when required for the prosecution of the fisheries—and that no individual can secure to himself that which is free to all, the following letter is published at length.

“ *Downing-street, 6th November, 1833.*

“ Sir,

“ I am directed by Mr. Secretary Stanley to acquaint you, that he has had under his consideration your letter of the 24th September, in which, conformably to the willingness he had signified to receive your views on the subject, you point out the grounds on which you conceive that His Majesty has still the power to dispose at pleasure of the space of five hundred feet above high-water mark, reserved in all grants of lands on the coasts of Prince Edward Island; and I am to apprise you that there appears to be some variance in the accounts of the facts on which your opinion is founded. With respect to the existence of fishing establishments, Mr. Stanley understands that such as are at present formed are small, and that the business for which they are erected is not prosecuted with activity; but he is by no means informed that there is that entire absence of them which is assumed in your communication. Neither is he advised that the extension of the fisheries is opposed by the natural obstacles or inconveniences to which you refer. As regards the terms of the reservation in the grants, there is an important difference to be observed. In the grants which you have had an opportunity of seeing, the reservation you remark is made to His Majesty, his heirs and successors; but Mr. Stanley has before him extracts of as many of the grants of townships and of islands as are recorded in Prince Edward Island itself, and in these the reservation is uniformly expressed as being ‘a liberty to all *His Majesty's subjects* of carrying on a free fishery,’ ‘and of erecting stages and other necessary buildings for the said fishery or fisheries, within the distance of five hundred feet from high-water mark.’ By the words which are employed, a right is reserved to the King’s subjects, and not to the Crown separately. Under these circumstances, Mr. Stanley

feels that he could not authorise leases to be granted of lands of which it seems probable that no appropriation could be made to private individuals, without derogating from a right belonging to the public at large. Mr. Stanley desires me to add that, in coming to this conclusion, he is glad to perceive by the enclosed extract from a recent despatch from the Lieutenant Governor, that the reservation of the strip of five hundred feet along the shore, has in no case obstructed the occupation of the contiguous lands, and consequently, that the present decision cannot be deemed likely to impede any measures which the proprietors may be disposed to adopt for the settlement of their estates in Prince Edward Island.

I am, Sir,

"Your obedient humble servant,
"R. W. HAY."

"R. Stewart, Esq."

The two remaining points upon which it is necessary to address you in this view of a general question, are,—First, the position in which the offer made by the Government for the redemption of the quit rents now remains; and,—Second, the policy of the two acts passed by the Island Legislature, to impose taxes upon the wilderness lands.

It is a fact within the knowledge of all conversant with the past and present history of Prince Edward Island, that the question of the quit rents presents a different aspect there from that which it bears in any other colony of the Crown. The policy of the reservation in the first instance was, no doubt, to comply with the feudal principle of a return or render; and further, to provide a casual or territorial revenue, which the Crown might apply to meet the necessary expenses of the Government. The policy may have been sound when introduced, but in practice it appears that the quit rents have never been collected in any other colony of British North America,

except in the Island of Prince Edward. The Government attempted in 1833 to collect them in New Brunswick; and after the law expenses were discharged, it is stated, in an address of the House of Assembly to the King, that of the sum of £2700 collected, a paltry balance of £240 only remained to be paid into the treasury. The collection of quit rents was never tried in Nova Scotia. In both of these provinces they have since been abandoned, the local legislature in each having entered into an arrangement with the Crown to contribute a certain sum toward the civil list, in lieu of the quit rents; and although now under the control of the local legislatures, no attempt has been made to revive them, by imposing any tax upon wilderness land.* In the Island of Prince Edward, they are still recognised—they are still paid; the sum of £1400 and upwards was, in 1837, derived from the land tax imposed in lieu of these rents.

The more aged of you will distinctly remember the distress and misery which the sudden collection of the quit rents, after having been allowed to accumulate uncalled for during so many years, entailed upon the tenantry during the administration of Lieutenant Governor Smith. Up to this time, although some of the tenantry and of those who live upon their own lands in the Island, may have

* In New Brunswick, during the present session of the legislature, a bill has been introduced into the House of Assembly, to compensate the owners of those lands which had been forfeited and sold, by the officers of the Crown, for the non-payment of the quit rents.

escaped, yet the proprietors have been called upon to pay their quit rents; and there are several of them who, although the owners of large tracts thickly settled, and of a handsome rent roll upon paper, have, of late years, answered the drafts of their agents for the amount of their quit rents. No funds and no rents could be derived from their property in the Island for this purpose. They have paid the Island tax out of their British funds; they claim no merit for having thus, in good faith and with honourable principle, acknowledged the rights of the Crown and discharged this tax, which had been successfully and sternly resisted in the neighbouring colonies. But they ask, would it have been so paid, had the lands been owned by resident proprietors? It is left to yourselves to weigh and answer this question.

The proprietors, although they have been, and still are, disposed to comply with every lawful demand, and to pay the quit rents due upon their lands, are of opinion that they have just cause of complaint in the severity with which their collection has been pressed, when abandoned in other colonies, and in the ruinous law expenses incurred when they were not paid within the period prescribed. Many of them complain of the rigour with which the law has been enforced upon all occasions against them; to repeat the language employed by some of them to the writer, they say, "The majesty of the law appears then in its full "might: but the moment we appeal to it for protection, and seek to recover our rents, it is allowed

" to become a dead letter, its arm sleeps nerveless ;
 " and we have been told that it cannot be enforced
 " by those whose duty it is to persuade or to compel
 " obedience. The quit rents are exacted from us
 " with severity, and unless immediate payment be
 " made, our property is wantonly sacrificed by the
 " very parties who, if they do not actually refuse
 " justice, dole it out with an apathy and tardiness
 " which render it a mockery. Can it be just, can
 " it be reasonable, that the proprietors should be
 " called upon to pay quit rents, not only for the
 " wilderness land (of that they do not complain),
 " but for the occupied and cultivated land, whilst
 " the tenantry are persuaded by agitators, free from
 " punishment, not to pay the rents which are due
 " to us? What would those in authority say if we,
 " by the same means as are employed against us,
 " endeavoured to resist the payment of our rents?
 " If we pay, ought not the tenants? If the law be
 " rigidly administered to us, why not to them?
 " While exacted to the last shilling from us for
 " every acre, whether barren or swamp, is it just
 " that the resident freeholder and farmer should be
 " allowed to refuse payment for the rents due on
 " their cultivated lands, as they have done for
 " a series of years?" This language is quoted
 that you may comprehend the view they take
 of the question, that you may inquire into the
 truth of these complaints, and if true, that, as
 honest men, you may correct this injustice, and
 apply to the proprietors that golden rule which is
 the basis of all sound morality.

Another of their causes of complaint is the higher terms for the redemption of the quit rents exacted from them. In 1833, when Viscount Goderich was Secretary of State for the Colonies, a proposition for their commutation was made to the proprietors in a letter enclosing a copy of a despatch sent to Lieutenant Governor Young; and that you may thoroughly comprehend the bearing it has upon the present controversy, the following passage is extracted from the despatch referred to.

“The agreement respecting quit rents in Prince Edward Island, embodied in the provincial statute 11 George IV. c. 17, must not be disturbed. But so far as is consistent with that agreement, I am desirous to extend to Prince Edward Island a very advantageous arrangement which has lately been offered the colonists of New Brunswick. The enclosed extract from my despatch to the Governor of New Brunswick will explain to you that arrangement, and the following is the manner in which I propose that it should be made applicable to Prince Edward Island.

“During the first two years after the expiration of the *five years* for which the claim to quit rents has been suspended, the quit rents should be redeemable at fifteen years' purchase; during the next period of two years, they should be redeemable at eighteen years' purchase; at all subsequent periods, they should be redeemable at twenty years' purchase. The claim to quit rents will revive retrospectively, as well as prospectively, at the termination of the existing agreement. But, following the analogy of the measure adopted for New Brunswick, I am of opinion that the arrears due up to the time when the plan I have described will come into operation, should be remitted.”

Although the redemption was tendered in New Brunswick at sixteen years' purchase, twenty years' purchase were adhered to in Prince Edward Island. The proprietors represented to the Government the injustice of such a distinction; and although they pressed their claim to favourable consideration

because they had paid those rents for a series of years, after they had been abandoned in other colonies, His Majesty's Government refused to modify the original proposal, or to deal with them upon the same terms which, at the same time, had been tendered to the landholders of New Brunswick. They refer to this as another proof that they have not had the good fortune yet to secure the "ear of the Government," and cannot rank themselves amongst that "*faction*," so often referred to by the agitators, as having enjoyed for years past the sunshine of favour in Downing-street. They are at a loss to comprehend the meaning of this insinuation. They are ignorant of the existence of any such faction, or of any other feeling in their favour than that which is founded in justice. They have sought the protection of their rights and common justice, and have been ever content with measures controlled by this standard. They have asked for, they expect nothing more.

By the above extract from Lord Goderich's despatch, it is apparent that His Majesty's Government, when they sanctioned the act of the Island Legislature imposing a land tax in lieu of the quit rents, clearly contemplated that the act should only continue, and the tax be only exigible under it, for the term of *five years*. This term is mentioned in words in the eleventh section of the statute. It enacts, "That this act shall continue and be in *force for and during the space of five years*, from *the time that His Majesty's royal allowance thereof shall be published*, and from thence to

"the end of the then next session of the General Assembly, and no longer." The Government recognised this definite period in the terms of adjustment proposed. The proprietors continued to pay the tax in the belief, that, at the expiration of the *five* years, they would be free to accept the terms of commutation proposed to them; but the Legislature formed the determination to give the act an extension of an additional year, and to secure to themselves the control of the quit rents for *six* years in place of *five*, as relinquished by the Government. This purpose was developed by an act passed in the session of 1837, and by notices published in June last by the treasurer, which under the authority of this act, called upon the proprietors to pay a sixth year's tax. The proprietors were in alarm when these facts were communicated to them,—for they saw, that, if they submitted to the sixth year's tax, without remonstrance or explanation, it might involve them at some future time in a dispute with the Government. Upon the legality of the tax, no opinion is offered here. At the time it was demanded, the act of 1837, passed, according to the preamble, "*to prevent doubt,*" had not been sanctioned by the Queen in council; and as it had reference to the Crown revenue, some prerogative lawyers are of opinion that the tax might have been successfully resisted. It is clear there was an opinion in the Island that had the act of 1837 not been passed, the tax could not be enforced. Now, in this case of doubt, had the proprietors been so disposed, they might have embarrassed the local Government, and your courts

of justice, with innumerable suits. They adopted a different, and a more creditable, because a more peaceful course; they brought the facts under the notice of Lord Glenelg, and offered to submit to the collection of the tax, provided his Lordship would treat the sum, so paid in the Island, as part of the commutation money still due for their quit rents. His Lordship, in the clear apprehension of its justice, readily accepted this offer; and by this exercise of sound discretion, has saved the Island Legislature, and the officers acting under it, from the vexation and embarrassment which might have ensued; and you and your treasury from the expense it might have created; and it is expected that you will give some praise to your landlords for the moderation they have displayed in the transaction.

In approaching the last subject of controversy, between the Island Legislature and the proprietors, which yet remains to be explained, namely, the act passed last session to impose a tax upon wilderness lands, it is intended to review the policy which dictated that act, with an impartial and just regard, as well for the revenue of the Island, as for the rights of the proprietary body and the other owners of the soil.

On behalf of the Legislature it is admitted, in the first place, that the Island of Prince Edward, as regards the sources of a Crown or territorial revenue, is in a different position from the other colonies of British North America. The proprietors, as a body, agree in this admission; and while they

have in the past met that condition in their grants which imposes the payment of the quit rents, they still profess their willingness to acknowledge the rights of the Crown, but they expect to be treated by the Government and the Legislature with equal justice.

In the second place, the Legislature are supported in their interference—first, because the former act 11 George IV. c. 17, which imposed a tax upon lands, to be collected in lieu of the quit rents, and in which it was expressed “*that during the continuance of the act the collection of the quit rents should be suspended*,” had received the sanction of His Majesty in council; their right to deal with them for the period of five years was thus conceded, and in permitting the quit rents so to pass under their control, the Secretary of State recognised, for the first time, that policy which was subsequently more fully declared by Lord Goderich, in a despatch addressed to Lieutenant Governor Young, on the 27th January, 1833, and from which the following is an extract:—

“If this complaint be just, the best remedy for it would be found in the plan I have laid down. When the proprietors of land shall be required either to pay down a considerable sum for the redemption of their quit rents, or else to pay the quit rents themselves, with regularity, it will necessarily become their interest to improve the lands, or to sell them to others who will purchase with a real intention of improvement. I must observe, that the fund arising from the regular collection of quit rents, will be appropriated solely to objects connected with the colony. The support of the civil Government will, probably, be the most proper service in aid of which to expend this fund. The sums arising from the redemption of quit rents should not be treated as revenue, but rather as capital, to be laid out in further improvements.

"Thus, by the formation of roads, the clearing of land, the construction of wharfs, or for other public works, this fund might be so applied as to accelerate the development of the resources of the colony, and to give a new value to the lands belonging to the Crown."

The same policy was recognised by Mr. Secretary Stanley, in a despatch bearing date the 28th May, 1834. His opinion is contained in the following paragraph:—

"I admit the policy and the justice of making the owners of the land contribute largely to the internal expenses and improvements of the colony; and while I concur in the reasons which led my predecessor to object to escheating for non-performance of impracticable conditions of settlement, I am decidedly of opinion that a tax, in the nature of a penal assessment upon non-cultivation, is, under the circumstances of Prince Edward Island, a measure at once just and politic. But the amount of the penalty ought to be fairly considered, and, if possible, adjusted according to the practicability of fulfilling the intentions of the grant. On land of good quality, which probably would sell at twenty shillings per acre, a tax of four shillings and sixpence per hundred acres, or 4½ per cent. on the interest of the purchase-money, can hardly be said to be exorbitant; but if upon a grant of ten thousand acres, one-half be altogether irreclaimable and valueless, the tax is then doubled in effect, and becomes absolutely ruinous. I am aware of the difficulty, if not impossibility, of putting different assessments according to the supposed quality of wilderness land; but if this be impossible, it is the more necessary to see that the assessments are, on the whole, moderate and not unreasonable."

The interference of the Legislature is further recognised by Lord Glenelg, in his despatch of the 1st August, 1836, addressed to Sir John Harvey; and in pursuance of that moderate and conciliatory spirit professed and acted upon in the preparation of these remarks, the passage alluded to in this document is also printed at length: his Lordship says,—

"But although the Ministers of the Crown cannot take on themselves to sanction the proceedings which the Assembly point out, they are, nevertheless, fully alive to the serious injury which is caused to the Island by the want of a sufficient number of settlers. Gifted with a soil of unusual fertility, and possessing every advantage of climate and geographical position, the advancement of Prince Edward Island has hitherto been delayed by the inadequacy of its population. In other of the British provinces in North America, and more especially in Upper Canada, a similar inconvenience, although not to so great a degree, was heretofore found to exist, and various measures were tried for its remedy. Among these was the assessment of a tax on all granted lands of every description; but a difficulty having arisen in the recovery of this assessment, an act was passed by the provincial Legislature in 1825, to authorise the sale, in satisfaction of the debt to the public, of a sufficient portion of any land on which the tax should be eight years in arrear. The measure thus supported has been found effectually to meet the object in view; and I cannot but believe, that a system of a similar nature might be adopted, with equally good effect, in Prince Edward Island. I have, therefore, to desire, that in communicating to the Assembly His Majesty's reply to their address of the 9th April, you will suggest to them the expediency of introducing into Prince Edward Island the policy adopted in Upper Canada. I enclose a copy of the act passed in that province in the year 1825, as an assistance to the deliberations of the Legislature of Prince Edward Island. Should they concur in my opinion as to the advantages of such a measure, the details of any act which might be passed to carry it into effect, must, of course, be referred to their knowledge of the local peculiarities and customs of the Island; but it will be useful to them to be made acquainted with the regulations which experience has dictated in a neighbouring colony. It is necessary, however, to observe, that if such an act should be passed by the Legislature, it would be indispensable that it should contain a clause suspending its operation until His Majesty's pleasure upon it should be declared."

Having thus admitted the right of the Legislature to interfere, let us now pause, and inquire into the policy and justice with which that right has been exercised.

To the act passed by the Island Legislature in 1830, which imposed a tax upon lands of two shillings per hundred acres, equivalent to and in lieu of the quit rents, the proprietors raised no objection. To them it was of no consequence whether they paid their quit rents to the Crown or to the local legislature; nay, the majority of them preferred that these rents should pass under the control of the Island Legislature, and be expended in local improvements. They have a common interest with their tenants, and the inhabitants of Prince Edward Island, in these improvements being made; for the inevitable result of them is to increase the prosperity of the Island, and thus to elevate the value of property. They profess their anxiety to co-operate with the Legislature in such projects, and to aid in a useful and faithful expenditure of this public fund.

Why then, it may be asked by you, did the proprietors oppose the collection of a six year's tax, now in the course of collection under the act of 1837, and the other acts which preceded it? For this reason, and this reason only, that it was an encroachment upon the offer of commutation made by the Government to them in January, 1833; and because, as has been already explained, if they had not remonstrated at the time, it might and would have led to future difference. Neither were they of opinion that respect was due to that policy of the Legislature which sought to extend to six years, not by a straightforward and open, but by an indirect course, a concession liberally and unconditionally made for the period of five years only. It was, in

addition, a clear violation of an express contract, secured to them by the honour and good faith of Her Majesty's Ministers, and they were unwilling that that contract should be disturbed, and they be deprived of the opportunity it afforded of concluding the unpleasant controversy in which they have been involved, upon the question of the quit rents; especially when they saw the Legislature persevere in that unsound policy, and, as they conceive, that spirit of persecution, which dictated the act of last session. The proprietors wish the Legislature to place their property in the same position as the property of others.

Neither have they raised, nor do they intend to raise, any complaint against Her Majesty's Secretary of State, for the language of the last despatch, suggesting the imposition of a tax upon lands. They acknowledge their liability, and profess a readiness to pay such tax, if imposed rateably with a tax upon all other property, according to the provisions of the act passed in the Legislature of Upper Canada, and transmitted by his Lordship as an example for the Assembly of the Island to copy; they are willing that the quit rents should pass under the control of the Local Legislature, and be expended in local improvements, provided the terms of commutation be respected and fulfilled; but they state, at the same time, without reserve, that the act passed in the last session, imposing taxes upon land, is unjust, because partial—that it was avowedly framed to effect a virtual Escheat; and being satisfied, that it is at variance with just

policy and wholesome legislation, the proprietors mean to raise against it a resolute opposition; and after their reasons for their conduct are explained, they yet hope to secure your co-operation in having it, either withdrawn by the Legislature or disallowed by the Queen.

They sustain their opposition to the act upon the following grounds.

First. Because it violates the offer made to them and other owners of land in the Island, for the commutation of their quit rents.

In the 23d section of the act, "the confident expectation" is expressed, "*that His Majesty will be graciously pleased to forego his claim to the quit rents, during its continuance;*" and yet, if any proprietor had paid up, or should now pay up his commutation, there is no clause to protect him.—It is clear, therefore, that Her Majesty's Ministers have not the power, consistently with the terms proposed by their predecessors, to sanction the act in its present shape, and they feel satisfied that, when investigated, Her Majesty's advisers will recommend its disallowance.

Second. They oppose it, because, in place of imposing taxes equivalent to, and in lieu of the quit rents, it introduces an improper distinction between cultivated and uncultivated lands, which, as they believe, is without example in the records of legislation. It enacts,

"That there shall be paid, annually, during the continuance of this act, into the hands of the treasurer of this Island, or his deputies, the sum of four shillings, lawful money thereof, for every hundred acres of wilderness or

unimproved lands contained in the several townships, and the several Islands belonging thereto, except, as hereinafter is excepted; and the sum of two shillings for every hundred acres of cultivated or improved land, in the said several townships and Islands as aforesaid; and the sum of four shillings, for each and every uncultivated or unimproved town lot, pasture lot, common lot, and water lot, granted in the town and royalty of Charlottetown; and the sum of two shillings for each and every cultivated or improved town, pasture, common, and water lot, as aforesaid; and the sum of two shillings and eight-pence for each and every town lot, pasture lot, and water lot, granted in the towns and royalties of Georgetown, and Princetown; and the sum of one shilling and fourpence, for each and every cultivated or improved town, pasture, and water lot, granted in the said last mentioned towns and royalties—and so in proportion for a less quantity."

A tax should bear relation, either to the value of the subject from which it is exacted, to the productiveness of that subject or article taxed, or, if upon an individual, to his capability of paying it. Now, it is apparent, that cultivated land is more valuable and more productive, and of course better able to bear taxation, than vacant and wilderness land, which yields nothing.

In a colony, like Prince Edward Island, where the range of selection is wide, land will not be cultivated, unless it be of good quality,—all the land cultivated, may therefore be taxed; but in a large extent of wilderness, there are, necessarily, tracts of sand, marsh, or peat and barrens, which are incapable of cultivation. These, being of no value, ought not to be taxed. No reservation is made by the act in favour of such tracts, and hence, by taxing all lands indiscriminately, the tax upon good land is doubled in effect, and would prove ruinous to the proprietors.

To confirm this argument, the following extract is taken from the memorial presented to Lord Glenelg against the passing of the act.

"That in all countries there are tracts of land which never can be profitably cultivated, however dense the population may become, and to impose a burthen upon them is opposed to the principles of rational taxation.

"That Ireland, for instance, a country as densely peopled as any in Europe, contains 19,441,944 acres, being about 2½ acres to each person; out of which quantity there are 7,300,000 acres uncultivated, and about 4,500,000 acres of this quantity are capable of cultivation and improvement; as appears by the Third Report of the Committee on Emigration; (being more than three times the number of acres in Prince Edward Island), a great portion of which only requires draining, to render it equal in point of fertility to the best land in Prince Edward Island, and with a climate infinitely superior.

"That Great Britain (as appears by the same Report) contains 56,833,330 acres, being about 3½ acres for each person; of this quantity there are 22,819,330 acres uncultivated, more than one-third of the whole quantity, 9,934,000 acres of which are capable of cultivation and improvement, being more than seven times the number of acres in Prince Edward Island; and yet no person ever proposed to lay an exclusive tax on uncultivated land in Great Britain or Ireland, notwithstanding the outcry about surplus population, and the want of employment for labourers.

"That there are large tracts of land in Prince Edward Island, known by the names of black-spruce, and other swamps, white sands and barrens, the greatest portion of which never can be profitably cultivated; much less is it reasonable to expect that any part of such land could be so, when the Island is surrounded with so many millions of acres of good productive land in the adjoining Colonies of Nova Scotia, Cape Breton, and New Brunswick, from which it is only separated by a strait, in parts not ten miles across."

Some owners would not consent to pay so exorbitant a demand. Their properties would be levied upon and sold; large tracts would be forced upon the market, for which no purchasers would be found; the price of land would fall far below its real and

intrinsic value; the proprietors, who had paid the tax, would suffer, by the deterioration of their property, to an extent nearly as great as those who had forfeited their land's altogether: and in penetrating into these, the certain consequences of this measure, the mover of the act in your House of Assembly admitted, that, when it went into operation, it would "effect a virtual escheat;" it would effect that, by indirect means, which the Government had refused to an open and direct application.

To shew that this was the opinion of Mr. Secretary Stanley, the following extract is taken from his despatch of the 28th of May, 1834, already referred to.

"Independently of the difficulties and expense of collection, the avowed intention and expected effect is, to bring large masses of land under escheat for non-payment. But, although provision is made for selling so much of the land as may be necessary to cover the assessment, the effect of pouring so large a portion of land into a market already overstocked, may be so far to reduce the price as to render it impossible to find purchasers willing to take it at any price, subject to the amount of the duty; and in that case the civil government is left unprovided for."

The proprietors seeing these results, are determined to guard against them, by the safest remedy—that of prevention.

The agitators in the Island have frequently asserted, and the assertion has been adopted by the Secretary of State for the Colonies, "that the advancement of Prince Edward Island has hitherto been delayed by the inadequacy of its population." Lord Stanley, in his despatch of the 1st May, 1834, recommended that a tax should be imposed upon

wilderness lands as a penalty—as an inducement or spur to compel the proprietors to introduce a greater number of settlers—to sell and cultivate their lands. The proprietors have invariably denied that the settlement of the Island has been retarded by them. They claim the merit of introducing bodies of settlers, who never would have emigrated, had it not been for the assistance which the proprietors had rendered to them. Their system of granting leases has enabled many of them to emigrate, and to settle in the Island, who, from not having the means to buy lands, would never otherwise have crossed the Atlantic.

Some of the most valuable and estimable members of society, now the owners of extensive farms, and in comfortable and easy circumstances, began their career as tenants. Portions of the tenantry are said to be at the present moment the most industrious settlers in the Island. It has been argued by some, that the obligation to pay rent, and the prospect afforded them of becoming freeholders, has operated as a spur to exertion, and been the main cause of producing so large an export of agricultural produce. The proprietors deny that any single case can be established, where a person disposed to buy could not procure an eligible tract of land at a moderate price. The number of proprietors, and the anxiety felt by many to sell, has secured and will secure an active competition, which has enabled and will enable persons to obtain lands as freely, and now at cheaper rates, than if the lands still remained at the disposal of the Crown. And to complete this

argument, the following additional extracts are drawn from the memorial to Lord Glenelg, before referred to.

"That until within the last few years, Crown lands were granted in the neighbouring colonies upon payment of certain small fees; that public works to a great extent were carried on in the adjoining colonies, causing large sums of the public money to be put into circulation, which naturally attracted emigrants to those colonies; that the least reflection must satisfy any person, that emigrants without capital will give a preference to a colony where there is a certainty of employment and of money wages, to one where no such return for labour can be secured, which was and is the case in Prince Edward Island. In New Brunswick, Nova Scotia, and Cape Breton, there are large fields of minerals, which are extensively worked by the General Mining Association, who have expended upwards of £300,000. in mining operations, and employ hundreds of hands daily.

"That notwithstanding those advantages enjoyed by the adjacent colonies, Prince Edward Island has a greater population in proportion to its superficial extent, the only test by which a fair comparison can be made, than any other colony in British North America; seeing that in Prince Edward Island, there are only 42 acres for each person; that in Nova Scotia, there are 72 acres for each person; in Cape Breton, 166 acres for each person; in New Brunswick, 225 acres for each person; in Lower Canada, 332 acres for each person; in Upper Canada, 367 acres for each person; in Newfoundland, 387 acres for each person; as will appear by reference to the Tables in the third page of the Charlottetown Royal Gazette, of July 18th, 1837.

"That the population of Prince Edward Island has, notwithstanding the many disadvantages above-mentioned, progressively increased at a very rapid progress. The population in 1806, being only 9,676 persons; in 1827, 23,766 persons; and in 1833, 32,292 persons; being an increase in twenty-seven years of 22,616 persons, and the last six years of 9,026 persons: since 1833, the population has continued to increase, and is now supposed to amount to about 40,000 persons.

"That upon comparing the quantity of cultivated and the quantity of uncultivated land in the British North American Colonies, it will appear that in Prince Edward Island, one seventh part of the whole is under cultivation; whilst in Nova Scotia, only one thirteenth part; in Cape

Breton, only one thirty-fourth part; in New Brunswick, only one forty-second part; in Newfoundland, only one hundredth part; in Upper Canada, only one forty-eighth part; and in Lower Canada, only one thirty-eighth part of the whole is under cultivation: as will appear upon reference to *Bouchette's British Dominions in North America*, Vol. ii. page 235. And yet the only plea for imposing such an oppressive tax, is the non-settlement of the colony.

"That evil disposed persons in the colony have asserted, with much pertinacity, that Prince Edward Island has not kept pace with the colonies immediately adjoining, in the progress of settlement; this assertion is manifestly untrue, although it has been adopted without due inquiry by some persons; otherwise well informed on matters relating to the British Colonies. The fact nevertheless is, Prince Edward Island has not only kept pace with the colonies immediately adjoining, in regard to settlement, but has actually preceded them, in whatever way the comparison may be made, and will probably continue to do so, if the spirit which leads to agitation can be allayed; but it cannot reasonably be expected to outstrip them more than it has done. The adjoining colonies must and will continue to be settled in nearly the same ratio, as they possess advantages and facilities for settlers which Prince Edward Island never did and never can possess."

Third. The proprietors now object to the allowance of this act with greater confidence, because, admitting for the sake of argument that it was before justifiable as a penalty, and that the conduct of the proprietors had retarded the settlement of the Island, both of which statements they repudiate and are prepared with evidence to prove to be untrue,—having now submitted to the Government a set of terms, which are admitted to have removed every pretence of complaint,—having engaged to sell their lands at easier rates and upon better terms than either the Government or Local Legislature could do, if the lands were escheated or forfeited, and placed under their control,—having proposed, and some of them

being ready to carry on, an extensive system of emigration from Scotland,—they conceive that their property should be placed upon the same terms as that of others, and ought no longer to be selected as an exclusive subject for partial and unequal taxation.

And, in the *fourth* and last place, they object to the act because it is at variance with the equity and policy of the statute passed by the Assembly of Upper Canada, which Lord Glenelg transmitted to the Legislature of the Island as a model. This act imposes a rateable tax upon different species of real and personal property, as well as upon land; and that the provisions of it may be clearly comprehended by you, the second section is introduced here, together with the Table* contained in the Appendix.

"2. And be it further enacted, by the authority aforesaid, that the following property, real and personal, shall, after the said first Monday in January, 1820, and for every subsequent year during the continuance of this act, be deemed rateable property throughout the province, and shall be rated at the rate and valuation herein set forth; that is to say, every acre of arable, pasture, or meadow land, twenty shillings; every acre of uncultivated land, four shillings; every town lot, situated in the towns herein-after mentioned, to wit, York, Kingston, Niagara, and Queenston, fifty pounds; Cornwall, Sandwich, Johnstown, and Belleville, twenty-five pounds; every town lot on which a dwelling-house is erected in the town of Brockville, being composed of the front half of lots No. 10, 11, 12, and 13, in the first concession of the township of Elizabethtown, in the district of Johnstown, thirty pounds; every town lot on which a dwelling-house is erected in the town of Bath, being composed of the front or south half of lots No. 9, 10, and 11, in the first concession of the township of Ernestown, in the midland district, twenty pounds; every house built with timber, squared or hewed, on two sides, of one story in height, and not two stories, with not more than two fire-

* See Table at page 69.

places, twenty pounds, for every additional fire-place four pounds; every dwelling-house built of squared or flatted timber on two sides, of two stories in height, with not more than two fire-places, thirty pounds, and for every additional fire-place eight pounds; every framed house under two stories in height, with not more than two fire-places, thirty-five pounds, and every additional fire-place five pounds; every brick or stone house of one story in height, and not more than two fire-places, forty pounds, and for every additional fire-place ten pounds; every framed brick or stone house of two stories in height, and not more than two fire-places, sixty pounds, every additional fire-place ten pounds; every grist-mill wrought by water, with one pair of stones, one hundred and fifty pounds, every additional pair fifty pounds; every saw-mill one hundred pounds; every merchant's shop two hundred pounds; every store-house, owned or occupied for the receiving and forwarding goods, wares, or merchandize, for hire or gain, two hundred pounds; every stone horse kept for the purpose of covering mares, for hire or gain, one hundred and ninety-nine pounds. Provided also, that if any person shall bring into any township in this province any horse, as aforesaid, after the assessment roll shall have been made up for such township, and he is hereby required to demand and receive of any such person, the rate for such horse, as aforesaid, unless the owner can satisfy such collector that the rate for such horse has been returned or paid for that year, and in case of a refusal of payment, to proceed to the recovery of such rate by distress and sale of such horse, as aforesaid; every horse of the age of three years and upwards, eight pounds; oxen of the age of four years and upwards, per head, four pounds; milch cows, per head, three pounds; horned cattle, from the age of two years to four years, per head, twenty shillings; every close carriage, with four wheels, kept for pleasure, one hundred pounds; every phaeton or other open carriage, with four wheels, kept for pleasure only, twenty-five pounds; every curricule, gig, or other carriage, with two wheels, kept for pleasure only, twenty pounds; every waggon, kept for pleasure, fifteen pounds. Provided always, that every stove erected and used in a room where there shall be no fire-place, be deemed and considered as a fire-place. Provided also, that nothing herein contained shall extend, or be construed to extend, to any property, goods, or effects, matters, or things, herein mentioned or enumerated, which shall belong to, or be in the actual possession or occupation of, His Majesty, his heirs or successors; except the Crown and

Clergy reserves actually leased to individuals, which shall be liable to the same rates and assessments as other lands hereinbefore mentioned."

So far from rating uncultivated at double the value of cultivated land, the first is rated at four shillings per acre, the last at twenty shillings per acre. While the act passed in the Island taxes wilderness land at *four* shillings, and cultivated at *two* shillings per hundred acres—the first double that of the last; and this proportion is further increased, from there being no provision to limit the operation of the act to those tracts only which are capable of cultivation. The wilderness land in Upper Canada, so far from paying double or more than double the tax charged on the cultivated, is charged only one-fifth, that is to say, in the proportion of four to twenty, one-sixth less than the quit rent of two shillings payable in Prince Edward Island, and less than one-half of the tax intended to be imposed by the act—the proportion being twenty to forty-eight. By one of the clauses in the Upper Canada act, it is provided, that the tax shall "in no case exceed one penny in the pound "of the valuation at which each species of property "is rated;" and in another, that the tax on wilderness land is not to exceed in any one year, "*one shilling and eight-pence per hundred acres!*" The Proprietors express their readiness to pay a tax upon their landed property, equal to that which is imposed on all other property, under the sanction of an act passed by the Island Legislature, framed upon the same principles as that of Upper Canada;

but they declare their unqualified disapprobation of, and their resolute determination to resist by every constitutional means in their power, the act which has been thus exposed. And they now rely upon every honest and intelligent inhabitant of the Island to support them in this determination, if the act, and the policy which dictated it, be persevered in.

Having thus explained, on behalf of the proprietors, their legal rights—the equity of their claims—the sound and liberal policy which has always guided them, and the sincere desire with which they are animated to promote the settlement, the welfare and the prosperity of Prince Edward Island, it is expected, that the Legislature and yourselves will co-operate with them in the promotion of these public objects, and restore the Island to that state, which will induce respectable settlers to emigrate—sales to be effected—and British capital to be transferred to it: and, above all, to introduce that respect and obedience to the laws, which will prevent the necessity of an appeal to Parliament—an organic change in the Government—and a speedy annexation of Prince Edward Island to the neighbouring colony of Nova Scotia. They hope, to repeat the language of Lord Glenelg, that the new position in which they have voluntarily placed the affairs of the Island, “will beget that happier tone of confidence, and mutual good will,” between you and themselves, which they have never sought to disturb, and which they are anxious to perpetuate, from the sober conviction, that it will promote the

common benefit of both, and give a fresh and growing impulse to the settlement and prosperity of your fertile Colony.

Having done their part, the realization of these hopes depends now upon you. And they place this plain statement in your hands, in the confident expectation that the intelligent majority of you will no longer be imposed upon, by the artful, designing, and yet ignorant few; whose misrepresentations, in the absence of more accurate information, have led some of you to form erroneous opinions, and to entertain suspicions against those, who have been, and are still anxious to be, sincere and valuable friends.

[TABLE annexed to the Act passed by the Legislature of Upper Canada.]

[illegible]

APPENDIX. (A)

(See page 8.)

18 George III., Chapter 12.

An Act for removing all doubts and apprehensions concerning Taxation, by the Parliament of Great Britain, in any of the Colonies, Provinces, and Plantations, in North America, and the West Indies; and for repealing so much of an Act, made in the Seventh Year of the Reign of His present Majesty, as imposes a Duty on Tea, imported from Great Britain into any Colony or Plantation in America, or relates thereto.

“WHEREAS Taxation by the Parliament of Great Britain, for the purpose of raising a revenue in His Majesty’s Colonies, Provinces, and Plantations in North America, has been found, by experience, to occasion great uneasiness and disorder among His Majesty’s faithful subjects, who may, nevertheless, be disposed to acknowledge the justice of contributing to the common defence of the Empire, provided such contribution should be raised under the authority of the General Court, or General Assembly, of each respective Colony, Province, or Plantation. And whereas, in order as well to remove the said uneasiness, and to quiet the minds of His Majesty’s subjects who may be disposed to return to their allegiance, as to restore the peace

and welfare of all His Majesty's dominions, it is expedient to declare, that the King and Parliament of Great Britain will not impose any duty, tax, or assessment, for the purpose of raising a revenue in any of the Colonies, Provinces, or Plantations." May it please your Majesty, that it may be declared and enacted; and it is hereby declared and enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same. That from and after the passing of this act, the King and Parliament of Great Britain will not impose any duty, tax, or assessment whatever, payable in any of His Majesty's Colonies, Provinces, and Plantations, in North America, or the West Indies; except only such duties as it may be expedient to impose for the regulation of Commerce; the net produce of such duties to be always paid and applied to and for the use of the Colony, Province, or Plantation, in which the same shall be respectively levied, in such manner as other duties collected by the authority of the respective General Courts, or General Assemblies of such Colonies, Provinces, or Plantations, are ordinarily paid and applied.

2. " And be it further enacted by the authority aforesaid, that from and after the passing of this act, so much of an act made in the seventh year of His present Majesty's reign, entitled, an act for granting certain duties in the British Colonies and Plantations in America; for allowing a drawback

of the duties of customs upon the exportation from this kingdom, of coffee and cocoa nuts of the produce of the said Colonies, or Plantations, for discontinuing the drawbacks on china earthen ware, exported to America; and for more effectually preventing the clandestine running of goods in the said Colonies and Plantations; as imposes a duty on tea imported from Great Britain, into any Colony, or Plantation in America, or has relation to the said duty, be, and the same is, hereby repealed."

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